IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Bail Appl..No. 4201 of 2007()

CRIME NO. 90/07 OF EXACHERY POLICE STATION

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PETITIONER: 1ST ACCUSED;

LATHEESH.C.P., S/O.SIVADASAN, AGED 33,
CHEENAMPALLIPARAMBIL, SREESHYLAM, P.O.KOYILANDY.

BY ADV. SRI.SUNIL V.MOHAMMED

RESPONDENTS: STATE/ COMPLAINANT:

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1. THE STATE OF KERALA REPRESENTED BY THE
SI OF POLICE, EDACHERY POLICE STATION, THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SIMI, D/O.RAJAN, MEETHALEVALAPPIL,
SHIJIL NIVAS, P.O.MADAPPALLY COLLEGE, VADAKARA.

R1 BY PUBLIC PROSECUTOR SRI. P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4201 of 2007

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Dated this the 6th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 498A I.P.C. He is alleged to be guilty of matrimonial cruelty of the culpable variety against his wife. He prays that anticipatory bail may be granted to him.

2. The learned Prosecutor submits that the investigation is already complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate as C.C.334 of 2007. In these circumstances the petitioner must appear before learned Magistrate and claim regular bail, submits the Prosecutor.

3. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. Hand over the order.

(R. BASANT)
Judge

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